

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING  
A JUDGE, NO. 04-53

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CASE NUMBER SC04-1655

**ANSWER AND AFFIRMATIVE DEFENSES**

The Honorable Alan C. Todd, by and through his undersigned counsel, and pursuant to Rule 9 of the Florida Judicial Qualifications Commission Rules, files this Answer and Affirmative Defenses to the Notice Of Formal Charges served on or about August 24, 2004. In response to the particular numbered paragraphs, 1 through 9, of the Notice Of Formal Charges, Judge Todd answers as follows:

1. Admit that Judge Todd engaged in a conversation with Orange County Sheriff's Deputy Mindy Hood and other courthouse personnel. Judge Todd denies that he "chastised" Deputy Hood.

1 (a). Without knowledge. Judge Todd did engage in a discussion, outside of the courtroom in a comparatively private conversation, where he commented that society, rightly or wrongly, held a double standard when judging men and women who have sex outside of marriage. This comment on societal standards was not an assertion of personal belief or opinion.

1 (b). Without knowledge as to whether Judge Todd made any comments regarding her family. Admit in that Judge Todd discussed Deputy Hood's unwed mother status.

1 (c). Deny. Judge Todd did engage in a discussion with Deputy Hood outside of the courtroom and in his office where he stated that he personally believed a genuine spiritual faith should be accompanied by a positive change in behavior. Judge Todd expressed his personal religious belief that although some Christian philosophies seem to argue that accepting Jesus Christ as a personal savior is the only thing that is required in order to obtain entry into heaven, his Christian philosophy was that one not only had to accept Jesus Christ as savior but to also experience positive spiritual growth through behavioral change.

1 (d). Deny.

1 (e). Deny.

1(f). Deny. Judge Todd said that many clergy would not marry a couple who were living together, but that did not concern him because he was performing a civil marriage.

1(g). Deny.

2. Admit. Judge Todd stated words to the effect that Deputy Hood was a disgrace to society; had no morals; and that her status as an unwed mother was what was wrong with the world today. These comments were made

to Deputy Hood, outside of the courtroom, and as a direct result of the Judge being questioned as to his personal opinion on what he felt about her having a child out of wedlock. Judge Todd denies making a comment regarding the fact that she was a “single parent.” Admit as to the second statement. Admit that he responded to a question from his Judicial Assistant several years ago, after viewing the ultrasound of an unmarried court clerk that he was not overjoyed about a child being born under these circumstances. This was a private conversation with his Judicial Assistant in his office. Judge Todd denies stating that “...these kids grow up to be losers and go to jail,” or words to that effect.

3. Deny as to any statement to the effect that Deputy Hood’s son would grow up to be a loser. Without knowledge as to second statement.

4. Admit. Judge Todd jokingly referred to Deputy Bagley as a “deputite” during banter with court personnel. The statement was not made disparagingly or in any effort to insult Deputy Bagley. As to the second statement, Judge Todd is without knowledge.

5. Admit. Judge Todd engaged in conversations outside of the courtroom instigated by Deputy Bagley concerning her personal life. Deputy Bagley was extremely open regarding her many and varied sexual practices partners and experiences and any statements by Judge Todd were in response to her discussing her personal life.

6. Admit. Judge Todd made the comment, in a poor attempt at humor, outside of the courtroom.

7. Admit. Judge Todd stated words to that effect to himself as an aside, and not directly to any person.

8. Admit. These comments were Judge Todd's kind suggestions on how one might relax and relieve stress.

9. Admit. Judge Todd made the statement in a poor attempt at humor. The statement was made outside of the courtroom, in the Judge's office and in Ms. Sutton's presence. The statement was not intended to be rude or demeaning to her. Judge Todd believes the conversation took place approximately three (3) years ago.

### **FIRST AFFIRMATIVE DEFENSE (FREE SPEECH)**

The statements admitted herein were made by Judge Todd in various comparatively-private conversations and bantering sessions he engaged in with courthouse personnel. The admitted statements were said by Judge Todd during the course of what he perceived as give-and-take discussions or debates in which he was merely intent on expressing his philosophical, moral, political, religious, and social views. A judge is not wholly stripped of his or her First Amendment free speech rights just by virtue of taking judicial office.

Judge Todd is not properly subject to judicial discipline for making statements regarding his thoughts, perceptions, and personal opinions in conversations with courthouse personnel when the statements were not made from the bench in the Judge's official capacity, did not adversely affect the orderly workings of the court, and did not suggest he was allowing his personal perceptions to interfere with his judicial duty to afford every person fair and impartial treatment. Though the great majority of his admitted statements fall within the protection of the First Amendment, Judge Todd, nevertheless, regrets their utterance for it was never his intent to offend or demean courthouse personnel. On the contrary, Judge Todd's demeanor in and out of the courtroom is open, honest, thorough, compassionate and personable, which is why his opinions are often solicited by court personnel and others outside of the courtroom. Judge Todd values highly his court personnel and sincerely regrets if feelings were unintentionally bruised when exchanging thoughts and ideas. The application of Canons 1, 2A, 3B(4) and 3B(5) to Judge Todd's admitted extra-judicial statements violate his free speech rights under the First Amendment to the United States Constitution.

**SECOND AFFIRMATIVE DEFENSE**  
**(FREE EXERCISE OF RELIGION)**

Judge Todd is not properly subject to judicial discipline for extra-judicial statements made in connection with his First Amendment right to exercise his religion and give expression to his religious beliefs bearing on the subjects of authentic faith, and the raising of children within the institution of marriage. This affirmative defense is specifically raised with regard to Judge Todd's admitted comment expressing his belief that a genuine spiritual faith should be accompanied by a positive change in behavior, as opposed to a mere proclamation of faith unaccompanied by any change in conduct; and to his admitted comment(s) about how harmful it is for children to be born out of wedlock. The application of Cannons 1 and 2A to Judge Todd's admitted extra-judicial statements, described above, violate his free exercise rights under the First Amendment to the United States Constitution.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail delivery to Lansing C. Scriven, Esq., Special Counsel, Florida Judicial Qualifications Commission, 442 West Kennedy Boulevard, Suite 280, Tampa, Florida 33606 and Thomas C. MacDonald, Jr., Esq., General Counsel,

Florida Judicial Qualifications Commission, 1904 South Holly Lane, Tampa,

Florida this \_\_\_\_ day of September, 2004.

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